

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3160 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

and

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHARATKUMAR PREMJIBHAI

Versus

THAKORABHAI VITTHALBHAI PATEL

Appearance:

MR BA SURTI for Petitioners

NOTICE SERVED for Respondent No. 1

MR CJ VIN for Respondent No. 12

CORAM : MR.JUSTICE D.C.SRIVASTAVA

and

Date of decision: 27/07/2000

ORAL JUDGEMENT

[Per : D.C.Srivastava,J.]

Bharatkumar Premjibhai, defendant NO. 5 in Special Civil Suit No. 133 of 1995 of Civil Judge, (S.D.), Surat has filed this appeal challenging compromise decree dated 21st April, 1995 in the aforesaid suit on the ground that he was not signatory of the compromise nor the compromise was read over to him and that it was fraudulently got signed by the alleged power of attorney Ganpatbhai Nathuji Thakore who was never given power of attorney by the appellant to sign and verify the compromise.

We have heard Shri B. A. Surati, learned counsel for the appellant. Respondents nos. 1 to 11 are served. None appears on their behalf. Respondent No. 12 is the alleged power of attorney Ganpatbhai Nathuji Thakore of defendant No. 5. He is represented by the learned counsel Shri C. J. Vin. He has also been heard. Ganpatbhai Nathuji Thakore has filed affidavit explaining the circumstances under which fraud was practised and played upon the defendant No. 5 as well as upon the court by the plaintiff.

Since none has appeared on behalf of the respondent No.1 to 11, we have heard the arguments of Shri B.A. Surati and Shri C.J. Vin and we have also examined the compromise decree under challenge and the order dated 21st April, 1995 through which the compromise was verified and recorded by the court below and the decree was passed in terms of the compromise.

The order of the Court below itself shows that the defendant NO. 5 was not present when the compromise was signed and verified. On the other hand, it shows that the power of attorney holder Shri Ganpatbhai Nathuji Thakore had signed on behalf of the defendant NO. 5 and believing that Ganpatbhai Nathuji Thakore was the real power of attorney holder, the Court below recorded the compromise.

If the compromise decree is attempted to be set aside on the ground of fraud, particulars of fraud have to be alleged and proved. In the memo of appeal, there is clear allegation that this defendant was not present

when the compromise was signed, read over and verified before the court concerned. From the affidavit of Ganpatbhai Nathuji Thakore filed in this appeal, relevant facts have been disclosed. In para 2 of his affidavit, he states that the judgment and decree by consent in the aforesaid civil suit was obtained by fraud. He has also explained the circumstances under which his signatures were obtained and on the compromise in question. According to him, civil suit no. 629 of 1989 pertaining to his property was pending against the plaintiff no.1 and as such, he went to attend the court of Civil Judge,(S.D.), Surat on 20th April, 1995 and 21st April, 1995 when he was sitting in the court room of the Civil Judge,(S.D.), Surat, one Shri K.S. Rana, Advocate for respondents nos. 1 to 8 informed him that suit no. 629 of 1989 which is between this man and respondents nos. 1 to 8 is likely to be compromised. At that time, alongwith Shri Atodariya, respondent NO.8 namely Vithalbhai Chhaganbhai Patel was present. On his insistence to give two signatures, one on the Vakalatnama and the another on one paper, he had signed the Vakalatnama and paper believing that the two documents could be used for settling civil suit no. 629 of 1989 between him and the respondent NO. 1 Vithalbhai Chhaganbhai Patel. When he received copy of the first appeal no. 3160 of 1995, he came to know that Vithalbhai Chhaganbhai Patel and his family members had played fraud with him. The Vakalatnama was placed in the file of civil suit no. 133 of 1995 and on the next day, they had placed the forged power of attorney in which they made Ganpat Nathuji Thakore as power of attorney holder of Bharatbhai Premjibhai. Alongwith this forged power of attorney, they placed Vakalatnama and purshis. Thereafter, consent decree was obtained. He has further deposed in the affidavit that he had no knowledge about the power of attorney. He had also no knowledge that the signature so obtained on the Vakalatnama was used for obtaining the consent decree. He approached Vithalbhai Chhaganbhai Patel for taking necessary action against the compromise and fraudulent decree but no action was taken. It is also deposed in the affidavit that he remained silent from 1995 till 4th August, 1999 because threat was extended against him that in case he would not remain silent, he would be put behind the bars. In the concluding portion, he has deposed that the plaintiff had obtained fraudulent decree by using forged power of attorney. This affidavit has not been controverted by the remaining respondents nos. 1 to 11. As such, prima facie, fraud in obtaining the aforesaid decree is established. Learned advocate C.J.Vin has no objection in case the appeal is allowed in view of the affidavit

filed by Shri Ganpatbhai Nathuji Thakore.

For the reasons stated above, the appeal is allowed. The compromise decree dated 21st April, 1995 is hereby set aside. No order as to costs.

27.7.2000. (D.C.Srivastava,J.)

(H.K. Rathod,J.)